

AMENDMENTS TO LB 367

Introduced by Health and Human Services.

1 1. Strike the original sections and insert the following
2 sections:

3 Section 1. Section 71-5829.03, Revised Statutes
4 Cumulative Supplement, 2008, is amended to read:

5 71-5829.03 ~~No~~ Except as provided in section 71-5830.01,
6 no person, including persons acting for or on behalf of a health
7 care facility, shall engage in any of the following activities
8 without having first applied for and received the necessary
9 certificate of need:

10 (1) The initial establishment of long-term care beds or
11 rehabilitation beds except as permitted under subdivisions ~~(6)~~ (4)
12 and ~~(7)~~ (5) of this section;

13 (2) An increase in the long-term care beds of a health
14 care facility by more than ten long-term care beds or more than ten
15 percent of the total long-term care bed capacity of such facility,
16 whichever is less, over a two-year period;

17 (3) An increase in the rehabilitation beds of a health
18 care facility by more than ten rehabilitation beds or more than ten
19 percent of the total rehabilitation bed capacity of such facility,
20 whichever is less, over a two-year period;

21 ~~(4) A relocation of long-term care beds from a health~~
22 ~~care facility at one physical facility or contiguous site to~~
23 ~~another noncontiguous site within the same health planning region~~

1 if the relocation will cause an aggregate increase in long-term
2 care beds between those locations of more than ten beds or more
3 than ten percent of the total bed capacity, whichever is less, over
4 a two-year period;

5 ~~(5) Any relocation of long-term care beds from a health~~
6 ~~care facility located in one health planning region to a health~~
7 ~~care facility in a different health planning region;~~

8 ~~(6) (4) Any initial establishment of long-term care beds~~
9 ~~through conversion by a hospital of any type of hospital beds to~~
10 ~~long-term care beds if the total beds converted by the hospital~~
11 ~~are more than ten beds or more than ten percent of the total~~
12 ~~bed capacity of such hospital, whichever is less, over a two-year~~
13 ~~period;~~

14 ~~(7) (5) Any initial establishment of rehabilitation beds~~
15 ~~through conversion by a hospital of any type of hospital beds to~~
16 ~~rehabilitation beds if the total beds converted by the hospital~~
17 ~~are more than ten beds or more than ten percent of the total~~
18 ~~bed capacity of such hospital, whichever is less, over a two-year~~
19 ~~period; or~~

20 ~~(8) (6) Any relocation of rehabilitation beds in Nebraska~~
21 ~~from one health care facility to another health care facility.~~

22 Sec. 2. Section 71-5829.04, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-5829.04 (1) All long-term care beds which require a
25 certificate of need under section 71-5829.03 are subject to a
26 moratorium unless one of the following exceptions applies:

27 (a) An exception to the moratorium may be granted if the

1 department establishes that the needs of individuals whose medical
2 and nursing needs are complex or intensive and are above the
3 level of capabilities of staff and above the services ordinarily
4 provided in a long-term care bed are not currently being met by the
5 long-term care beds licensed in the health planning region; or

6 (b) If the average occupancy for all licensed long-term
7 care beds located in a twenty-five mile radius of the proposed
8 site have exceeded ninety percent occupancy during the most recent
9 three consecutive calendar quarters as reported at the time of
10 the application filing and there is a long-term care bed need as
11 determined by the ~~formula in~~ under this section, the department
12 may grant an exception to the moratorium and issue a certificate
13 of need. If the department determines average occupancy for all
14 licensed long-term care beds located in a twenty-five mile radius
15 of the proposed site has not exceeded ninety percent occupancy
16 during the most recent three consecutive calendar quarters as
17 reported at the time of the application filing, the department
18 shall deny the application.

19 (2) The department shall review applications which
20 require a certificate of need under section 71-5829.03 and
21 determine if there is a need for additional long-term care beds
22 ~~based on the following formula:~~ as provided in this section.
23 No such application shall be approved if the current supply of
24 licensed long-term care beds in the health planning region of the
25 proposed site exceeds the long-term care bed need for that health
26 planning region. For purposes of this section:

27 (a) Long-term care bed need is equal to the population

1 of the health planning region, multiplied by the utilization rate
2 ~~goal~~, of long-term care beds within the health planning region, and
3 the result divided by the minimum occupancy rate of long-term care
4 beds within the health planning region; ~~goal~~. No such application
5 shall be approved if the current supply of licensed long-term care
6 beds in the health planning region of the proposed site exceeds the
7 long-term care bed need for that health planning region, determined
8 by aggregating the long-term care bed need established for each sex
9 and age group using the formula.

10 In reaching this determination:

11 (a) The population includes the total population of the
12 health planning region of the proposed site, disaggregated into
13 the following age categories: Birth through sixty-four years of
14 age, sixty-five years of age through seventy-four years of age,
15 seventy-five years of age through eighty-four years of age, and
16 eighty-five years of age and over. Each listed age category shall
17 be further categorized by gender. The most recent population
18 projections available from the department for the year which is
19 closest to the fifth year following the date of the application
20 shall be used to determine the population used in the formula;

21 (b) Population is the most recent projection of
22 population for the health planning region for the year which is
23 closest to the fifth year immediately following the date of the
24 application. The applicant shall provide such projection as part of
25 the application using data from the University of Nebraska-Lincoln
26 Bureau of Business Research or other source approved by the
27 department;

1 ~~(b)~~ (c) The utilization rate goal is the number of people
2 using long-term care beds ~~per one thousand persons~~ living in the
3 health planning region in which the proposed project is located
4 divided by the population of the health planning region; ~~Such~~
5 ~~utilization rate shall be computed for each of the population~~
6 ~~categories listed in subdivision (2)(a) of this section and based~~
7 ~~on the most current utilization data available from the department;~~
8 and

9 ~~(e)~~ (d) The minimum occupancy rate goal is ninety-five
10 percent for health planning regions which are part of or contain
11 a Metropolitan Statistical Area as defined by the United States
12 Bureau of the Census. For all other health planning regions in the
13 state, the minimum occupancy rate goal is ninety percent.

14 (3) To facilitate the review and determination required
15 by this section, each health care facility with long-term care beds
16 shall report on a quarterly basis to the department the number
17 of residents at such facility on the last day of the immediately
18 preceding quarter on a form provided by the department. Such report
19 shall be provided to the department no later than ninety days after
20 the last day of the immediately preceding quarter. The department
21 shall provide the occupancy data collected from such reports upon
22 request. Any facility failing to timely report such information
23 shall be ineligible for any exception to the requirement for a
24 certificate of need under section 71-5830.01 and any exception to
25 the moratorium imposed under this section and may not receive,
26 transfer, or relocate long-term care beds.

27 Sec. 3. Section 71-5830.01, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 71-5830.01 Notwithstanding any other provisions of the
3 Nebraska Health Care Certificate of Need Act, a certificate of need
4 is not required for:

5 (1) A change in classification between an intermediate
6 care facility, a nursing facility, or a skilled nursing facility;

7 (2) A project of a county in which is located a city of
8 the metropolitan class for which a bond issue has been approved by
9 the electorate of such county on or after January 1, 1994; ~~and~~

10 (3) A project of a federally recognized Indian tribe
11 to be located on tribal lands within the exterior boundaries of
12 the State of Nebraska where (a) a determination has been made by
13 the tribe's governing body that the cultural needs of the tribe's
14 members cannot be adequately met by existing facilities if such
15 project has been approved by the tribe's governing body and (b)
16 the tribe has a self-determination agreement in place with the
17 Indian Health Service of the United States Department of Health and
18 Human Services so that payment for enrolled members of a federally
19 recognized Indian tribe who are served at such facility will be
20 made with one hundred percent federal reimbursement; ~~and-~~

21 (4) A transfer or relocation of long-term care beds from
22 one facility to another entity in the same health planning region
23 or any other health planning region. The receiving entity shall
24 obtain a license for the transferred or relocated beds within
25 two years after the transfer or relocation. The department shall
26 grant an extension of such time if the receiving entity is making
27 progress toward the licensure of such beds.

1 Sec. 4. Section 71-5865, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-5865 In an appeal of a decision to deny a certificate
4 of need, the person requesting the appeal shall bear the burden of
5 proving that the project meets the applicable criteria established
6 in sections ~~71-5829.02~~ 71-5829.03 to 71-5829.06.

7 Sec. 5. Original sections 71-5829.04 and 71-5865,
8 Reissue Revised Statutes of Nebraska, and sections 71-5829.03
9 and 71-5830.01, Revised Statutes Cumulative Supplement, 2008, are
10 repealed.

11 Sec. 6. The following sections are outright repealed:
12 Sections 71-5829.01 and 71-5829.02, Reissue Revised Statutes of
13 Nebraska.